

CTV-L-95-131 P 5/21
JH

IN THE DISTRICT COURT FOR OTTAWA COUNTY
STATE OF OKLAHOMA

Dec 1 2 30 PM '95

STATE OF OKLAHOMA ex rel.
THE OKLAHOMA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff

vs.

MICHELIN NORTH AMERICA, INC.;
THE BF GOODRICH COMPANY, INC.;
FOUNDATION TO SAVE OUR CHILDREN'S
ENVIRONMENT aka SAVE OUR CHILDREN'S
ENVIRONMENT; WAYNE FORD;
UNIROYAL GOODRICH TIRE COMPANY aka
or predecessor to UNIROYAL GOODRICH)
TIRE COMPANY, INC.;
ASBESTOS REMOVAL AND
MAINTENANCE, INC.;
and KDS ENVIRONMENTAL
SERVICES,

Defendants

RECEIVED

DEC 11 1995

Case No. CJ 95-641

PETITION FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

COMES NOW the Plaintiff, State of Oklahoma ex rel. the Oklahoma Department of Environmental Quality (hereinafter "DEQ" through their counsel Attorney General of Oklahoma W.A. Drew Edmondson, by Jeannine Hale, Assistant Attorney General, and complains of the Defendants as follows:

1. Venue is proper in Ottawa County, Oklahoma, based upon the actions of the Defendants which have occurred and are continuing to occur in relationship to property with street address of 1000 Goodrich Blvd, Miami, Oklahoma, and legal description of Section 24, Township 28N, Range 22E, Indian Meridian, Ottawa County (hereinafter referred to as the "property").

2. Defendant The B.F. Goodrich Company (hereinafter "BFG") is a New York corporation doing business in the State of Oklahoma, with mailing address of 3925 Embassy Parkway, Akron, Ohio 44333. Defendant BFG is the successor to The B.F. Goodrich Company, a corporation organized under the laws of the state of Ohio. Defendant BFG's service agent is The Corporation Company, 735 1st National Building, Oklahoma City, OK 73102.

3. The Defendant Uniroyal Goodrich Tire Company, a Delaware corporation doing business in the State of Oklahoma, is a wholly owned subsidiary of Michelin North America, Inc. with mailing addresses at Greenville, South Carolina and Akron, Ohio. UGTC was formed in 1986 through the merger of portions of the business of The BF Goodrich Company and Uniroyal Tire Company, Inc. Upon information and belief, UGTC is now merged in Uniroyal Goodrich Tire Company, Inc., and both are collectively referred to hereafter as "UGTC". UGTC's service agent is National Corporate Research, LTD., 613 SW 112th Street, Oklahoma City, OK 73170.

4. Based upon information and belief, Defendant Michelin North America, Inc. is a New York corporation doing business in the State of Oklahoma, with offices in Greenville, South Carolina. Michelin North America's predecessor was Michelin Tire Corporation; these corporations are hereinafter collectively referred to as "Michelin". Michelin owns in whole or part the Defendants BFG and UGTC. Michelin's service agent is The Corporation Company, 735 First National Building, Oklahoma City, OK 73102.

5. Based upon information and belief, Defendants UGTC and Michelin own in part or whole the Defendant BFG, or otherwise exercise control over the actions of Defendant BFG and/or the subject property, or otherwise have assumed responsibility for environmental claims relating to the property.

6. Defendant Foundation To Save Our Children's Environment aka Save Our Children's Environment (hereinafter referred to as "SOCE") is a nonprofit corporation, incorporated in the State of Oklahoma, with mailing address of 2302 S. Garnett, Tulsa, Oklahoma 74127. Defendant Wayne Ford is the President and Director of SOCE and resides at 12430 E. 14th Place, Tulsa, OK 74128.

7. Defendant Asbestos Removal and Maintenance, Inc. (hereinafter referred to as "ARM"), is a Kansas corporation with mailing address of 1630 S. St. Clair, Unit 20, Wichita, Kansas 67213, which does business in the State of Oklahoma and has designated as service agent Douglas S. Pewitt, 34 First Avenue, N.E., Miami, OK 74354.

8. Defendant KDS Environmental Services, Inc., (hereinafter "KDS") is an Oklahoma corporation with an address of 9209 S. Eastern Ave, Moore, OK 73160. Jerry Doyle, 624 N.W. 5th Street, #3, Moore, OK 73160 is the President and service agent for KDS.

FIRST CLAIM FOR RELIEF**POLLUTION**

9. The allegations contained in paragraphs 1 through 8 are hereby incorporated by reference as if fully set forth herein.
10. The property was owned by Defendant BFG from 1948 to 1993, when title of the property, or title to a part thereof, was transferred by quitclaim deed for \$10.00 (ten dollars) to Defendant SOCE.
11. Such property was used by Defendant BFG as an industrial facility to manufacture tires and to conduct related operations from approximately 1948 until 1986.
12. In 1991, prior to the 1993 quitclaim deed, a preliminary environmental site assessment at the property was conducted on behalf of Defendant BFG and SOCE.
13. Information provided by the preliminary environmental site assessment report for the property, official state records in Plaintiff's possession, and inspections and sampling conducted by Plaintiff, shows that the property includes a building which contains asbestos, carbon black and various containers of materials. Also on the property outside the building is debris containing polychlorinated biphenols (PCBs), asbestos, a surface impoundment containing industrial wastes, containers and equipment containing carbon black dust, and a solid waste

landfill. Surface and ground waters and soils on and underlying the property contain chemicals which include, but are not limited to, nickel, selenium, cyanide, beryllium, naphtha, benzene, mercury, toluene and cadmium.

14. The asbestos, PCBs, industrial wastewater, chemicals and materials found in the containers, equipment, soils, surface waters, groundwater and solid waste landfill, and the other materials and debris at the property constitute "waste" as defined in 27A O.S. Supp., 1995 § 2-6-101 and "pollutants" pursuant to 27A O.S. Supp., 1995 § 2-1-101.

15. The Oklahoma Department of Environmental Quality (hereinafter referred to as "DEQ") has jurisdiction over such wastes and pollutants and has authority to pursue causes of action for violations relating thereto pursuant to the Oklahoma Environmental Quality Act, 27A O.S. Supp. 1995, §§ 1-1-101 et seq., and the Oklahoma Environmental Quality Code, 27A O.S. Supp. 1995, §§ 2-1-101 et seq., including violations occurring prior to and after July 1993.

16. The wastes at the property were produced and caused by the actions and operations of the Defendants BFG and SOCE, their agents and employees and the Defendant Wayne Ford.

17. The actions and operations of the Defendants BFG, SOCE and Wayne Ford were subject to the control of the Defendants Michelin and UGTC, or were taken on behalf of the Defendants Michelin and UGTC, or one or them, in an agent-principal relationship, or were taken with

apparent authority and/or ratification by Defendants Michelin and UGTC, or were part of a joint venture.

18. Defendant KDS filed NESHAPS notices with the Department of Environmental Quality and, upon information and belief, contracted with Defendant KDS to perform asbestos removal operations at the property which have been performed in part.

19. Upon information and belief, the Defendants BFG, UGTC, Michelin, SOCE and/or Ford contracted with The Schoonover Company, a Michigan corporation, to perform demolition services and salvage operations at the property and Schoonover has conducted such operations and performed such services at the property in part.

20. The Defendant Wayne Ford, acting individually or on the behalf of the Defendants BFG, UGTC, SOCE and Michelin, managed and directed activities of the Defendants at the property since 1993 to present.

21. During the period from 1948 to present, the Defendants and each of them, through actions of the Defendants or their agents or employees, have placed, caused to be placed, exercised control over or otherwise contributed to the wastes on said property and the condition thereof.

22. "Pollution" is defined as the presence in the environment of any substance, contaminant or pollutant, or other alteration of the physical, chemical or biological properties of the environment, including but not limited to the waters of the State, or such release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property, or acts or conduct in violation of Oklahoma's Water Quality Standards. 27A O.S. Supp. 1995, § 2-1-102.

23. The wastes at the property have caused pollution or are in a location where the same will cause or are likely to cause pollution.

24. It is unlawful for any person to place wastes in a location where such will cause or is likely to cause pollution of waters of the state, air, land or the environment, pursuant to 27A O.S. Supp. 1995, § 2-6-105, formerly 82 O.S. 1991 § 926.4.

25. The actions of the Defendants constitute unlawful pollution of the air, land, water and environment of the state pursuant to 27A O.S. Supp. 1995, § 2-6-205.

26. Pursuant to 27A O.S. Supp. 1995, §§ 2-3-501 et seq., the Defendants are liable for civil penalties in the amount of \$10,000 per violation, for each day during which said violation occurs.

27. Pursuant to Oklahoma Administrative Code (OAC) 252:610-1-7, any person responsible for such pollution may be required to conduct appropriate sampling, monitoring and site assessment activities to determine the nature, extent and risks associated with such pollution or sources and report the results thereof to the Executive Director of the DEQ. Plaintiff is entitled to an order requiring Defendants to conduct such sampling, monitoring and assessment activities.

SECOND CLAIM FOR RELIEF

NUISANCE

28. The allegations contained in paragraphs 1 through 27 are hereby incorporated by reference as if fully set forth herein.

29. The wastes, the Defendants' actions, the condition of the property and equipment thereon, and pollution, create a threat to the environment, harm to natural resources of the State, and unacceptable risks to human health.

30. Such actions by Defendants and the presence of such wastes and pollution at the property, including asbestos inside and outside the building, PCBs, carbon black dust, solid waste, contaminated soils, polluted groundwater, contaminated surface water, industrial wastewater impoundment, containers, debris, and other materials, constitute a public nuisance pursuant to 27A O.S. Supp. 1995, § 2-6-105 and 50 O.S. 1991, § 2.

31. Such nuisance has caused and is continuing to cause damage to and harm to natural resources, the environment and the citizens of the State of Oklahoma.

32. The actions of Defendants in creating the nuisance, failing to take appropriate actions to eliminate the nuisance and failing to comply with applicable requirements is causing an imminent threat of harm to the environment and to the health and safety of residents of Miami, Oklahoma and other persons exposed to the same.

33. Unless the pollution and condition of the property is corrected, the nuisance will continue, causing monetary damages to be incurred by the public. Defendants' actions in failing to take appropriate actions in this regard will result in placing responsibility for clean-up/demolition/abatement on the state, county or city, and is in violation of public policy.

34. Plaintiff is entitled to injunctive relief requiring Defendants to take appropriate actions to abate the nuisance.

35. Defendant BFG's actions were taken with knowledge and in wilful and wanton disregard for the rights and privileges of the public, entitling Plaintiff to recover exemplary damages, costs and attorney fees incurred in connection with this proceeding.

THIRD CLAIM FOR RELIEF

WATER QUALITY - DISCHARGES TO SURFACE WATER

36. The allegations contained in paragraphs 1 through 35 are hereby incorporated by reference as if fully set forth herein.

37. Pursuant to 27A O.S.Supp. 1995, § 2-6-205, it is unlawful for any person to discharge any pollutant to waters of the state without first obtaining a permit from the DEQ.

38. No permit to discharge pollutants to waters of the state has been issued by the State of Oklahoma to any of the Defendants or other persons at the subject property.

39. Waters of the state on, under or adjacent to the property contain pollutants which have been placed, spilled or discharged, and continue to be discharged, into waters of the state due to the activities of the Defendants.

40. Defendants have failed to apply for a permit and have failed to report said discharges or spills, in violation of OAC 252:605-3-40 and OAC 252:605-11-1 and in violation of corresponding rules previously contained in OAC 785:40.

41. For such violations, Defendants may be assessed civil penalties in the amounts set forth in 27A O.S. Supp. 1995, § 2-6-206 and § 2-3-501 et seq.

FOURTH CLAIM FOR RELIEF

WATER QUALITY - SURFACE IMPOUNDMENT

42. The allegations contained in paragraphs 1 through 41 are hereby incorporated by reference as if fully set forth herein.

43. All persons using or operating a surface impoundment for the containment or treatment of industrial wastewater, including stormwater, are required to obtain a permit from the DEQ, maintain such impoundment, and close such impoundment, pursuant to requirements established by the DEQ pursuant to 27A O.S. Supp. 1995, §§ 2-6-501 et seq. and OAC 252:615.

44. Defendants have owned, operated and used a surface impoundment at such property.

45. Defendants have failed to reapply for, transfer or otherwise obtain the proper permit for continued operation and use of said impoundment and have failed to maintain the impoundment as a total retention structure.

46. Defendants have failed to apply for and obtain approval of the DEQ for closure of the impoundment as required by OAC 252:615 Subchapter 9.

47. Said actions of the Defendants are in violation of state law, are subject to civil penalties as provided by the Oklahoma Environmental Quality Code 27A O.S. Supp. 1995, §§ 2-3-501 et seq., and entitle the DEQ to appropriate orders from the Court requiring compliance with operation, maintenance and closure requirements.

FIFTH CLAIM FOR RELIEF

WATER QUALITY - GROUNDWATER DISCHARGES AND POLLUTION

48. The allegations contained in paragraphs 1 through 47 are hereby incorporated by reference as if fully set forth herein.

49. Pursuant to 27A O.S. Supp. 1995, §§ 2-6-103, the DEQ has comprehensive authority to abate pollution of waters of the state. Groundwater is included within the definition of "waters of the state" under 27A O.S. Supp. 1995, § 2-1-102.

50. Defendants BFG, SOCE, Michelin, and UGTC, their agents and employees, are each responsible for groundwater pollution.

51. Pursuant to OAC 252:610 Subchapter 5, any person responsible for groundwater pollution may be required to submit certain information, prepare a site assessment plan, prepare a remediation plan, submit such plans to the DEQ for approval prior to implementation, and to implement the approved plans.

52. Plaintiff is entitled to an order requiring the Defendants to comply with applicable rules and laws of the state.

SIXTH CLAIM FOR RELIEF

AIR QUALITY

53. The allegations contained in paragraphs 1 through 52 are hereby incorporated by reference as if fully set forth herein.

54. The Air Quality Division of the Plaintiff Oklahoma Department of Environmental Quality (formerly the Air Quality Service of the Oklahoma State Department of Health), has been delegated authority to enforce the National Emission Standard for Asbestos by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA"). 40 C.F.R. § 61.04 (LL). DEQ, through the Environmental Quality Board, has adopted rules which incorporate

by reference 40 C.F.R. Subpart M, at Oklahoma Administrative Code (OAC) 252:100-41-15, National emission standards for hazardous air pollutants.

55. Defendants BFG, SOCE, ARM and KDS are persons subject to the requirements of the Oklahoma Clean Air Act, 27A O. S.Supp. 1994, §§ 2-5-101 to 2-5-118 (Supp. 1994) and rules adopted thereunder,

56. Defendants BFG, SOCE, ARM and KDS are owners and/or operators of a Renovation/Demolition (Reno/Demo) operation under the National Emission Standard for Asbestos, 40 C.F.R. Subpart M, §§ 61.140 - 61.157 (1993) as codified in OAC 252:100-41-15.

57. Reno/Demo activities undertaken by these Defendants and their agents or employees are in violation of applicable asbestos regulations and have resulted in loose, friable asbestos being deposited inside the partially demolished facility, and on the grounds outside the facility, where it is subject to dispersal in the environment.

58. Due to actions or inaction of these Defendants, the building also contains considerable amounts of friable asbestos which was previously abated in anticipation of demolition and temporarily stored, which has not been properly disposed of as required by regulation and the partial demolition has rendered the building open to the outside, and therefore subject to the elements, creating a potential threat to persons in the area.

59. The above Defendants are owners/operators responsible for proper abatement, cleanup and disposal of such asbestos and may be required to take such actions pursuant to 27A O.S. Supp. 1995, § 2-5-110(C) and rules promulgated thereunder.

60. Plaintiff is entitled to an order requiring the Defendants to properly abate, cleanup and dispose of such asbestos.

WHEREFORE, the Plaintiff prays that the Court grant the relief requested heretofore in the Petition, and as follows:

1. Issue Orders that require the Defendants to:
 - A. Cease and desist all demolition activities at the property, pending approval by the DEQ.
 - B. Prepare and submit to the DEQ a proposed site assessment plan.
 - C. Implement and complete the site assessment pursuant to the approved plan and submit the results to the DEQ.
 - D. Prepare and submit to the DEQ a proposed site remediation plan.
 - E. Implement and complete the remediation of the site pursuant to the remediation plan as approved by the DEQ.
 - F. Grant entry and access to DEQ for purposes of inspection, monitoring, sampling, examination of records and activities, and other related purposes, at all reasonable times.

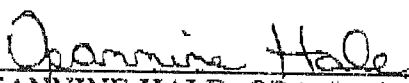
G. Obtain appropriate permits or submit closure plans or information as required by DEQ for all discharges, impoundments and disposal sites and activities as required by law and DEQ rules.

H. Immediately submit to DEQ all site assessment information and information relating to spills and disposal of wastes at the site.

2. Assess civil penalties for violations by the Defendants as provided by the Oklahoma Environmental Quality Code, in the amounts corresponding to the number and nature of the violations by each Defendant as proved by the evidence at trial.
3. Order that the Defendants take all actions necessary to prevent any migration of pollutants outside the perimeter of the property and notify any members of the public whose property, health, safety or welfare may be threatened or harmed by such pollutants, conditions of such property, or activities of Defendants thereon.
4. Issue such other orders and grant such other relief as may be appropriate and necessary under the circumstances.

RESPECTFULLY SUBMITTED

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA


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